

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

In the Matter of:)	
)	
“Need for Speed” Information for Consumers)	CG Docket 09-158
)	
of Broadband Services)	

REPLY COMMENTS OF THE CITY OF IOWA

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June 15, 2011

Introduction

The City of Iowa City is well positioned to provide insight from the perspective of the consumer into some of the issues raised in this Notice of Inquiry. As the local cable TV franchising authority the City receives relevant public comment, in the form of consumer complaints, regarding the performance of the primary local broadband service provider Mediacom.

The City's initial comments assert that consumers need to be fully informed by broadband providers of peak period speeds to be able to make reasonable marketplace choices. The City also argued that consumers need to be made aware of any data caps imposed by a provider and urged the Commission to address this issue.

In these Reply Comments the City disagrees with assertions made in several Comments¹ that consumers already possess enough information to make informed decisions and that there is no need for the Commission to undertake any action. The City also disagrees with comments suggesting that broadband providers should not be responsible for informing consumers of the speed requirements of typical applications.

Consumers lack sufficient information to make informed decisions.

The City of Iowa City disagrees with assertions that consumers already possess enough information to make informed market choices and that action by the FCC is unnecessary. Several provider comments point to a Commission survey² to back their claim that consumers are highly satisfied with their service. Yet according to the survey, 50% of consumers are less than fully satisfied with their service.

¹ See, e.g. Comments of Time Warner, Inc, CG Docket 09-158 (filed May 26, 2011); Comments of AT&T Inc.. CG Docket 09-158 (filed May 26, 2011); Comments of CenturyLink, CG Docket 09-158 (filed May 26, 2011);, Comments of the National Cable & Telecommunications Association, CG Docket 09-158 (filed May 26, 2011);

² John Horrigan & Ellen Satterwhite, *Americans' Perspectives on Online Connection Speeds for Home and Mobile Devices* (2010).

At the same time, the fact that 41% are “somewhat satisfied” with their service might equally suggest that consumers may have become accustomed to a performance level below optimum for the speed they are provisioned. For example, consumers may have come to expect some applications not to perform well during peak periods and see that as “normal.” In short, it can not be clearly concluded, as the Comments of Time Warner, Inc. assert, that “there is simply no ‘problem’ here for the Commission to solve, and it would be arbitrary and capricious for the Commission to adopt rules requiring broadband providers to comply with the consumer education requirements contemplated in the *Notice*.”³ At the same time, it is important to note that according to the survey 80% of these customers do not know what level of service they receive. That such a large majority of subscribers are unaware of their broadband speed could suggest that many consumers lack the knowledge or technical savvy to determine if they are receiving the level of service for which they pay and not that broadband speed is of no concern for them. Regardless, it is hard to understand how it could be concluded that consumers “believe they receive the speeds that their service providers advertise”⁴ when most are unaware of their speed.

Peak period speed is the best measure of broadband speed.

The City’s initial Comments argued that peak period speed is the measurement consumers need to make informed marketplace decisions. Comments of several broadband providers agree that only providing the “up to” speed does little to inform consumers. ViaSat suggest in their comments that knowledge of peak period speed is needed by consumers.⁵ Similar comments of other small telecommunications organizations agree in principle and suggest that “average speed...measured at peak versus non-peak times, and with realistic assessments (based upon actual service conditions) as to

³ Comments of AT&T, Inc. CG Docket 09-158 (filed May 26, 2011), p.6.

⁴ Comments of Time Warner, Inc., CG Docket 09-158 (filed May 26, 2011), p.7.

⁵ Comments of ViaSat, Inc., CG Docket 09-158 (filed May 26, 2011), p.3.

factors such as oversubscription and the use of shared versus dedicated plant”⁶ would be an appropriate measurement. Several Comments assert that “actual” speed measurements would be misleading to consumers. On this point we agree. As Time Warner notes, actual performance is highly variable depending on a number of factors. Yet, they go on to assert that “up to” language is “the clearest available benchmark for consumers”⁷. On this point we strongly disagree and again reiterate our position, spelled out in our initial comments, that it is peak period speed is the criteria that does the most to inform consumers of their actual user experience.

The Commission needs to address data caps.

In the City’s initial comments we also suggested that the Commission should consider requiring provider disclosure of data caps and the potential impact of these caps on consumer's service. The National Cable & Telecommunications Association (NCTA) claim that application developers, not broadband providers, should be responsible for informing consumers of the speed requirements needed for their product's optimal performance and cite the case of Netflix in Canada. The NCTA points to Netflix offering a degraded stream as a “role application providers can play in ensuring efficient network usage”.⁸ But in fact, Netflix offers a degraded stream in Canada because of the severe data caps that have been imposed by providers⁹, which makes streaming video in a manner typical in the United States, untenable for many consumers. It is due to examples such as this that the City continues to urge the Commission to examine the impact of data caps on broadband consumers.

⁶ Comments of Joint Comments for the Organization for the Promotion and advancement of Small Telecommunications Companies, The National Telecommunications Cooperative Association, and The Western Telecommunications Alliance, CG Docket 09-158 (filed May 26, 2011), p.3.

⁷ Comments of Time Warner, Inc., CG Docket 09-158 (filed May 26, 2011), p.17.

⁸ ⁸ Comments of the National Cable & Telecommunications Association, CG Docket 09-158 (filed May 26, 2011), p.6.

⁹ Bode, Karl, *Netflix Reduces Video Quality To Limit Canadian Cap Impact*, <http://www.dslreports.com/shownews/113432>.

Broadband service providers should be required to provide consumers information of speed requirements of typical applications.

Several comments urged the Commission not to require broadband providers to provide any information about the speed requirements of various types of applications. They claim that application developers are better able to know their application's speed requirements and they, not broadband providers, should bear the responsibility to inform consumers.¹⁰ We disagree. If the goal is to provide consumers with the necessary information to make informed decisions when selecting a broadband service, then information about the speed requirements of common applications is essential for consumers before contracting for that service. Only when application information is combined with an accurate report of peak period speeds can a consumer correctly determine his or her current and possibly future needs. Additionally, we do not believe such a requirement would be a burden on providers. Speed requirements of typical applications are well known throughout the industry and broadband providers are already providing such information to consumers. In AT&T's comments they state "[l]ike many other Internet access service providers, AT&T *already* provides consumers with substantial information about the basic types of applications that will work optimally over the different broadband service plans we offer. We provide this information using simple, consumer-friendly language and graphics".¹¹ We suggest that such practices should be standardized and made a universal requirement for all broadband service providers.

Conclusion

There is a need for Broadband providers to be required to provide specific information prior to a consumer entering into a service contract if consumers are going to be protected from misleading practices now common in the broadband marketplace. Information on the typical peak period bandwidth speeds, the speed requirements of common applications, the existence of any data caps,

¹⁰ See, e.g. Comments of AT&T, Inc, CG Docket 09-158 (filed May 26, 2011), p.6.

¹¹ Comments of AT&T, Inc, CG Docket 09-158 (filed May 26, 2011), p.1-2.

typical data usage of the most data-intense applications, and fees that will be charged for any overages, should be provided to consumers by broadband providers in clear and unambiguous terms. For these reasons, the City of Iowa City urges the Commission to enact regulations that will ensure at least minimum levels of needed information and consumer protection for broadband users.

Respectfully submitted,

/s/ Thomas M. Markus

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